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REMARKS

Entry of the foregoing election of invention and election-of-species and an early examination on the merits of the above-identified patent application are respectfully requested in view of the foregoing elections and the following remarks.

The second Office Action pertaining to the above-identified patent application consisted of a requirement for restriction under 35 U.S.C. §§121 and 372, as between the following groupings of claims which the Examiner has contended represent distinct inventions:

Group I: Claims 18 and 33-39, drawn to a method of SO₂ monitoring, classified in Class 600, subclass 331; and,
Group II: Claims 40-51, drawn to a method of monitoring oxygenation, classified in Class 600, subclass 323.

Applicant has elected the invention of "Group II," as recited in Claims 40-51 for prosecution in the instant application.

By virtue of Applicant's election of the invention of Group II (*i.e.*, Claims 40-51), the Examiner's second Office Action also requires Applicant to elect between two species-of-invention for monitoring the oxygenation of blood, pursuant to 35 U.S.C. §121:

Species A: A method of monitoring oxygenation of blood based

on a measured absorption spectrum, readable upon Claims 40-44; and,

Species B: A method of monitoring oxygenation of blood based on an optimal spectrum, readable upon Claims 45-51.

Applicant has elected the species-of-invention as recited in Claims 45-51 (*i.e.*, Species B), to which this application is to be limited, if no generic claim is ultimately held to be allowable.

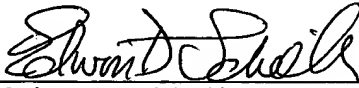
Finally, Applicant wishes to advise the Examiner that an Information Disclosure Statement is being prepared and is anticipated to be filed by early June 2004. The Examiner is, therefore, respectfully requested to await receipt of the forthcoming Information Disclosure Statement prior to issuance of the next Office Action, which is expected to address the merits of the subject matter of Applicant's invention, as herein elected.

Accordingly, entry of the foregoing election-of-species, an early examination on the merits (following receipt of Applicant's Information Disclosure Statement) and the allow-

ance of all claims are respectfully requested and earnestly solicited.

Respectfully submitted,

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The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.